

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**BARBARA G. DAUVEN**, et al.,

Civil No. 09-1471-PK

Plaintiffs,

O R D E R

v.

**U.S. BANK NATIONAL ASSOCIATION**,  
et al.,

Defendants.

---

Barbara G. Dauven  
Theodore (Ted) E. Dauven  
Christiana C. Dauven  
13120 SW Thoma Road  
Lake Oswego, Oregon 97034

Pro Se Plaintiffs

Pilar C. French  
Megan E. Smith  
Lane Powell PC  
601 SW Second Avenue, Suite 2100  
Portland, Oregon 97204-3158

Attorneys for Defendants

KING, Judge:

The Honorable Paul Papak, United States Magistrate Judge, filed Findings and Recommendation on November 8, 2010. Plaintiffs filed timely objections to the Findings and Recommendation.

When either party objects to any portion of a magistrate's Findings and Recommendation concerning a dispositive motion or prisoner petition, the district court must make a de novo determination of that portion of the magistrate's report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). This court has, therefore, given de novo review of the rulings of Magistrate Judge Papak.

This court ADOPTS the Findings and Recommendation of Magistrate Judge Papak (#40) dated November 8, 2010 in its entirety.

IT IS HEREBY ORDERED that Defendants' motion to dismiss or alternative motion to strike (#32) is granted in part and denied in part. The court grants defendants' motion to dismiss for lack of subject matter jurisdiction (#32) with leave to amend to correct the defects in the jurisdictional allegations. Specifically, upon amendment, plaintiffs should truthfully allege that they are citizens of the United States and are domiciled in Oregon or any other state diverse from defendants. The court grants defendants' motion to strike (#32) plaintiffs' claim for attorney's

fees. The court grants in part and denies in part defendants' motion to dismiss for failure to state a claim (#32). With respect to the motion, the court dismisses the following claims with prejudice: abuse of process (First Cause of Action); willful and wanton misconduct (Second Cause of Action, Seventh Cause of Action); outrageous conduct (Third Cause of Action); and intentional infliction of emotional distress (Fourth Cause of Action). Plaintiffs' claims for false imprisonment (Fifth Cause of Action) and battery (Sixth Cause of Action) are not dismissed. The court denies plaintiffs' motion for extension of time (#35).

DATED this 9<sup>th</sup> day of December, 2010.

/s/ Garr M. King

GARR M. KING  
United States District Judge